STATE OF MICHIGAN

COURT OF APPEALS

In re D. HODGES-THOMAS, Minor

D. HODGES-THOMAS,

Appellee,

and

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

J. HODGES-CRUELL,

Respondent-Appellant,

and

B. THOMAS,

Respondent.

UNPUBLISHED
July 22, 2010

No. 297122
Ingham Circuit Court
Family Division
LC No. 09-001474-NA

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

In this child protective proceeding, appellant appeals by leave granted from the circuit court's order of disposition, entered following a bench trial, assuming temporary custody of appellant's minor child and placing him in appellee department's care. For the reasons set forth in this opinion, we affirm.

Appellant argues that she was entitled to a new jurisdictional trial because she was denied a jury trial below. Child protective proceedings are civil matters, MCL 712A.1; *In re Brock*, 442 Mich 101, 107; 499 NW2d 752 (1993), and the Michigan Constitution provides that the right to a jury trial in a civil matter is waived unless demanded "by one of the parties in the manner

prescribed by law," Const 1963, art 1, § 14. MCR 3.965(B)(6) provides that a respondent must be advised at the preliminary hearing "of the right to trial on the allegations in the petition and that the trial may be before a referee unless a demand for a jury or judge is filled pursuant to MCR 3.911 or 3.912."

MCR 3.911(B) provides that the proper procedure for demanding a jury trial in a juvenile proceeding requires filing a written demand with the court within 14 days after the court gives notice of the right to jury trial, or within 14 days after an appearance by an attorney, but no later than 21 days before trial. In the instant case, appellant's attorney included the demand for a jury trial with his appearance.[1]

Nonetheless, appellant's participation in the jurisdictional trial without objection to the absence of a jury constituted withdrawal and abandonment of the previously asserted right to a jury trial. This Court has held that an intention to withdraw a jury demand can be inferred from the conduct of the parties. *Marshall Lasser, PC v George*, 252 Mich App 104, 107-108; 651 NW2d 158 (2002). At both sessions of the jurisdictional trial, the trial court noted that the matter had been set for bench trial. Appellant failed to object to the absence of a jury at any time during

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[1] Appellee argues that the appearance filed by appellant's trial attorney was insufficient to properly preserve her right to a jury trial because the language in MCR 3.911(B)(2) allowing a party to make written demand for a jury trial "within . . . 14 days *after* an appearance by an attorney" indicates that such written demand should be separate from the appearance. The use of the preposition "after" in the court rule is not signaling that the demand must be subsequent to, and thus necessarily separate from, the appearance. Rather, in conjunction with the word "within"—which is defined as "[i]nside the limits or extent of in time" or "[i]nside the fixed limits of," *The American Heritage Dictionary of the English Language* (1996)—the term "after" is simply setting the outer limits of the applicable time frame. At any point within that period of time, including the very day an appearance by an attorney is entered, the demand for a jury trial may be made. Because the reading of the court rule advanced by appellee is erroneous, the conclusion based upon that reading is also in error.

Appellee argues that MCR 2.508(B)(1) also provides "that a jury demand must be a stand-alone document," or, alternatively, "must be incorporated into a pleading." Because an attorney appearance is not included in the definition provided for "pleading," appellee argues, it was insufficient to do so here. MCR 2.508(B)(1) provides as follows:

> A party may demand a trial by jury of an issue as to which there is a right to trial by jury by filing a written demand for a jury trial within 28 days after the filing of the answer or a timely reply. A party may include the demand in a pleading if notice of the demand is included in the caption of the pleading. The jury fee provided by law must be paid at the time the demand is filed.

Appellee makes the same analytical error as with MCR 3.911(B)(2). The use of the term "after" in conjunction with the term "within" clearly delineates a period of time within which a demand may be filed; it does not establish a condition precedent to the filing of the demand. As for appellee's argument regarding including a demand within a "pleading," it is based on the false premise that the recognition of the authority to assert the right in one circumstance necessarily implies that it is the only method by which the right can be asserted.

the jurisdictional trial, or assert that a jury trial had been requested but not acted upon by the court. The one reference to requesting a jury trial at the dispositional hearing was to notify the court that if appellant succeeded on appeal, she would be requesting a jury trial on the issue of the court's jurisdiction, thereby seemingly using the issue to create an appellate parachute. Accordingly, we infer from appellant's conduct that she had withdrawn and thus abandoned for purposes of appeal any previous assertion of her right to a jury trial.

Appellant also argues that she was denied her right to testify at the jurisdictional trial. However, appellant has provided only cursory discussion on this issue and has included no citation to appropriate authority to support her position. An appellant may not merely announce her position and then leave it to this Court to discover and rationalize the basis for her claims, nor may she give issues cursory treatment with little or no citation of supporting authority. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). An appellant's failure to properly address the merits of her claim of error constitutes abandonment of the issue. *Id*. Even if we did not find that appellant had abandoned this issue, the record reveals that appellant's decision not to address the Court was solely her choosing.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens